IBLA 95-209, 95-210 Decided March 6, 1995

Appeals from decisions of the Casper District Office, Bureau of Land Management, taking possession of wild horses and canceling private maintenance and care agreements 86823611, 93823613, and 92823583.

Stays denied; decisions affirmed.

1. Rules of Practice: Appeals: Stay--Wild Free-Roaming Horses and Burros Act

Under 43 CFR 4770.3(b), stays of decisions taking possession of wild horses and canceling private main- tenance and care agreements could not be granted and the decisions were properly affirmed when there was admitted failure to comply with animal care instructions issued by the authorized officer pursuant to 43 CFR 4760.1(d) after the horses were found in a deteriorated condition by a BLM inspection.

APPEARANCES: William J. Ahrndt, Evansville, Wyoming, pro se; Linda Hartman, Casper, Wyoming, pro se; Jennifer E. Rigg, Esq., Office of the Regional Solicitor, Rocky Mountain Region, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On January 11, 1995, William J. Ahrndt and Linda Hartman filed separate notices of appeal (and statements of reasons (SOR) in support thereof) from decisions issued December 13 and 14, 1994, by the Casper District Office, Bureau of Land Management (BLM). The decisions cancelled private maintenance and care agreements for three wild free-roaming horses assigned to Ahrndt and Hartman under section 3 of the Wild Free-Roaming Horses and Burros Act (1971 Act), 16 U.S.C. § 1333 (1988). Both decisions were declared to be in immediate effect. On January 31, 1995, Ahrndt and Hartman petitioned that the BLM decisions be stayed pending appeal. For reasons that will be explained below, the petitions for stay are denied and the decisions appealed from are affirmed.

On September 23, 1993, Ahrndt and Hartman obtained possession of the three animals at issue; assigned to Ahrndt were a chestnut mare and colt, freeze mark numbers 86823611 and 93823613, while Hartman took a buckskin and white gelding numbered 92823583. Under the maintenance agreements and Departmental regulation 43 CFR 4750.4-1, title to the animals remained in

the United States. See 16 U.S.C. § 1333((c) (1988). All three were to be kept at the same location near Glenrock, Wyoming. Nonetheless, in July 1994, without prior notice to BLM, the three horses were moved from Glenrock to the property of Joyce Schroder, northeast of Casper, Wyoming.

An inspection of the horses was made by BLM staff on October 27, 1994; the inspector found that they were in a deteriorated condition and immediate changes were needed in their care to prevent further damage to their health. It was reported that there was no shelter provided for the horses and that they were being kept in an enclosure with three other animals that was not large enough for them all. BLM found the three animals were not adequately fed, and were thin and not ready for winter. Moreover, their hooves had not been trimmed, and they had not been wormed nor given needed immunizations. Both during and following the inspection in October, BLM issued oral and written instructions requiring that Ahrndt and Hartman provide shelter for the three horses, separate them at feeding time to insure that each animal would receive a full ration, obtain needed immunizations, have their hooves trimmed, and see to it that all three should be wormed and provided adequate rations to ready them for winter. Nonetheless, a follow-up inspection conducted on December 3, 1994, revealed that although a windbreak and an improved diet had been provided by Schroder (with whom the horses had been boarded since July 1994), none of the changes in their care required by BLM had been made by Ahrndt or Hartman.

A written statement from Schroder to BLM explains that she received six horses from Hartman and Ahrndt in mid-July 1994, including the three here at issue, with an understanding that if Ahrndt and Hartman would provide all their feed, Schroder would care for them for a weekly boarding fee of $20. Provision of feed for the horses by Ahrndt and Hartman proved, however, to be sporadic and inadequate, and when in October 1994 Hartman left Schroder written instructions to cut the feeding ration, Schroder notified BLM. BLM then conducted the October 27 inspection, at which Hartman's daughter (who was Ahrndt's wife) was present, as was Schroder. Following the inspection, Hartman's daughter again instructed Schroder to cut the horse's rations despite the contrary order by BLM that feeding be increased. Thereafter, Schroder was obliged to provide most of the feed for the horses at her own expense. The weekly boarding fee owed by Ahrndt and Hartman was $180 in arrears when the horses were repossessed by BLM, while purchases made by Schroder for hay, grain, and other items of care totaled an additional $213 that was not reimbursed by either Ahrndt or Hartman. After repossession of the animals, BLM paid Schroder for 4 day's boarding costs, had the animals' hooves trimmed, and obtained other needed veterinary services for them on December 17, 1994; the amount expended by BLM on the three horses following repossession came to $1,492.02.

In a statement provided to BLM on January 16, 1995, Patricia K. Plute states that she boarded the same three horses for Ahrndt and Hartman from September 1993 until July 1994. She states that the horses were kept and cared for by her, primarily at her own expense, at her place in Glenrock

from the day they were first obtained from BLM until the time they were transferred to Schroder's care. She states that Ahrndt and Hartman paid minimal attention to the animals and that they had not "offered to even help to care for them, or pay for their care when I was taking care of them. I took care of these animals for their sake, not for [Hartman or Ahrndt]."

In his SOR, Ahrndt does not deny the findings made by the BLM inspector concerning the condition of the animals assigned to him, nor does he directly dispute the accounts given by Schroder and Plute. He instead explains that job demands, illness of his wife, and a fire at his residence prevented him from giving personal attention to the two animals entrusted to his care by BLM. He accuses Plute of neglecting the horses to take a fishing trip and states that the horses were wormed in July 1994. He accuses Schroder of neglecting to feed the animals on a regular schedule and contends that scheduling problems prevented him from providing veterinary and blacksmith services for the animals. He contends that he is now ready to care for the animals himself, and invites BLM to inspect the property where he proposes to do so. In his application for stay, he argues that he spent as much time with the animals "as circumstances allowed" and that if he is not allowed to keep them they "will return to their wild state."

Hartman's SOR does not question the findings made by the BLM inspection concerning the condition of her assigned horse, but argues that a fire at her house near Glenrock during January 1994 required that she move to another location 50 miles away and prevented her from giving personal care to the horse obtained from BLM in September 1993. She contends that she brought feed for the horse to Plute "at least once a week" but that Plute on one occasion left the animal unattended while she went fishing, so that Hartman's daughter was obliged to look after the animal. Hartman states that illness prevented her from giving personal care to the horse, but that after July 1994 she relied on Schroder to keep her informed about the horse's condition. She explains that circumstances beyond her control prevented her from vaccinating the horse and having his hooves trimmed. Like Ahrndt, she concludes that she is now ready to care for her animal and offers to allow BLM to inspect her present facilities, which she says will meet agency standards. In her application for stay, she contends that "this time" she will keep the horse "in my own care and on my own property." She also suggests that if the horse is not returned to her, it will be "returned to the wild."

Departmental regulations at 43 CFR Subpart 4750 implementing the 1971 Act include a special provision for stay of decisions to repossess horses in the possession of private persons under private maintenance and care agreements; it is this provision that both Ahrndt and Hartman have invoked in their petitions for stay. See 43 CFR 4770.3(b). Neither petition was filed, however, until BLM belatedly notified Ahrndt and Hartman (following the filing of their separate notices of appeal) that BLM had overlooked mention in the December decisions of their right to request a stay. In so doing, BLM suggested that a general stay regulation codified at 43 CFR 4.21(a) may have operated to stay the December 1994 decisions. This was

not the case. The December 1994 decisions to repossess the animals and cancel the agreements with Ahrndt and Hartman were placed into immediate effect by BLM. This action was authorized by 43 CFR 4770.3(b), which is the rule that controls wild horse appeals. See Michael Blake, 127 IBLA 109, 110 (1993) (finding that the wild horse regulations provided a specific stay procedure that preempts application of the general stay regulation). The December 1994 decisions have therefore been in effect since they were issued; the question now before us is therefore whether either or both of those decisions should be stayed in light of the showing on appeal made by Ahrndt and Hartman.

[1] The burden to show that a stay should issue rests with those who seek it. See Texaco Trading & Transportation Inc., 128 IBLA 239, 240 (1994). That the horses were found by BLM in October and December 1994 /in a deteriorated condition and needed food, veterinary care, and hoof trimming to restore them to health is undisputed. Neither Ahrndt nor Hartman has denied the three horses were left first with Plute and then with Schroder, so that the horses were boarded with others for the entire time they were assigned to Ahrndt and Hartman. Nor has either Ahrndt or Hartman provided any accounting for money or materials expended in the care of these animals so as to dispute the conclusions by Plute and Schroder that they were left to care for the animals without needed financial and personal help from either Ahrndt or Hartman. Both would-be adopters seek to excuse their failure to attend personally to the animals assigned to them or adequately pay others for their care by citing illness, press of other business, or perceived faults of Schroder or Plute to avoid responsibility for the condition in which the animals were found by BLM in October and December 1994. We have, however, rejected similar attempts to pass off observed conditions of deterioration in adopted animals in past cases involving repossession of wild horses. See Mary Magera, 101 IBLA 116, 119 (1988), and cases cited therein. On the record before us there is clearly no likelihood that either Ahrndt or Hartman can succeed on the merits of either appeal; under such circumstances their petitions for stay must be denied. See Texaco Trading & Transportation Inc., supra, and authorities cited.

When considering the petitions for stay in these cases, we have necessarily evaluated their merits; under the circumstances nothing is served by delaying decision on the ultimate questions presented by both appeals. Id. Departmental regulation 43 CFR 4760.1(d) establishes that if BLM determines that an animal is not receiving adequate care, corrective action may be ordered, as was done in these cases in October 1994. If needed corrective action is not taken after it is ordered by BLM, the animals affected may be repossessed and the care agreements may be cancelled. See 43 CFR 4770.1(j), 4770.2. Admitted inability to care for a horse because of one's own physical incapacity caused by illness does not excuse one from the duty to care for assigned animals imposed by entry into a maintenance agreement with BLM. Grant F. Morey, 108 IBLA 354, 356 (1989). Nor can one explain away observed physical deterioration in animals entrusted to his care by blaming others for negligent performance of an agreement to feed and care for them. See Mark L. Williams, 130 IBLA 45, 49 (1994).

Arguments by Ahrndt and Hartman that they were prevented by the illness and the press of other business and changed circumstances from giving admittedly needed care to their horses is an admission they neglected animals entrusted to their care that were found in a deteriorated condition. This concession, together with the record of the BLM inspection and the statements by the persons boarding the horses, establishes that BLM correctly cancelled their private care agreements and repossessed the three horses here at issue in order to protect the animals from further deterioration. The record on appeal supports the decisions issued by BLM in both cases presented and the BLM decisions must therefore be affirmed in each case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petitions for stay are denied and the decisions appealed from are affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge